NG AH LANG

v.

ALLIANZ GENERAL INSURANCE COMPANY (MALAYSIA)

HIGH COURT MALAYA, KUALA LUMPUR
MARY LIM J
[CIVIL SUIT NO: 22NCC-926-06-2012]
17 JUNE 2013

INSURANCE: *Accident insurance - Construction of policy - Cause of death - Whether insured died of bodily injury caused by accident solely and independently of any other cause - Whether insured died of diseased heart and not because of accident - Whether disease not covered by policy - Whether myocardial infarction (heart attack) fell within meaning of 'bodily injury' in policy*

The plaintiff, who was the administrator of a deceased person ('the deceased'), claimed for payment under a personal accident insurance policy ('the policy') which the deceased had bought from the defendant. The defendant repudiated liability on the ground that the deceased's death fell outside the scope of the policy as he did not die of bodily injury caused by a motor vehicle accident ('MVA') he was involved in and that even if he had been so injured, it was not injury that solely and independently of any other cause resulted in his death. The defendant contended that: (i) the deceased had a diseased heart and that was the primary cause of his heart attack and death; and (ii) the accident did not cause the death even if the shock and stress of it had triggered the heart attack. The policy excluded coverage for death directly or indirectly caused by or in connection with … any form of disease, infection …' etc. In brief, the deceased was driving his car when he collided with two other cars. Those who went to his aid found him to be conscious but having difficulty breathing. He died shortly after reaching the hospital. The post-mortem report stated that the cause of death to be 'ischemic heart disease due to coronary atherosclerosis'. The plaintiff called the deceased's doctor, a general practitioner and friend, PW2, to testify that the deceased did not suffer from high blood pressure, diabetes, cardiovascular illness or any other serious illness and that he was generally in good health. It was PW2's opinion, supported by the evidence of another witness, a cardiologist, that the sudden shock and stress of the accident must have triggered the heart attack.

A On the basis of that evidence, the plaintiff contended that the accident caused the death and that it was therefore covered by the policy. The defendant, on the other hand, called the doctor (DW2) who performed the post-mortem on the deceased and another specialist (DW3) who prepared a forensic pathology B review of the post-mortem examination as witnesses. DW2 discovered that the deceased's coronary arteries were severely narrowed by atherosclerosis and that there was a 'new myocardial infarction (heart attack) over the left ventricle' of the heart 'that was rapidly fatal in nature'. Based on tissue samples taken from C the deceased during the post-mortem, DW3 in his review concluded that the deceased had suffered the onset of a heart attack 12-24 hours before his death. DW3 submitted that because of his condition, the deceased could have suddenly collapsed and died at any time and it was a moot point to argue whether or not D the MVA played a decisive role.

Held (dismissing the claim):

(1) The cause of the deceased's death was proven with scientific empirical testing and examination to be not due to the MVA, E and even if the accident had anything to do with his death, it was not the sole cause of it. The terms of the policy required the accident to be the sole and independent cause of bodily injury which brought about the death. It excluded cover where the death was directly or indirectly caused by F "any form of disease". (paras 58 & 73)

(2) On the medical facts and on balance of probabilities, the deceased's heart was diseased. A diseased heart was squarely one of the situations excluded under the policy, even G indirectly. The diseased heart was pre-existing and played a part in the bodily injury and death of the deceased. This pre-existing condition was the substantive, proximate, effective and dominant cause of the heart attack. (para 70)

H **(3)** DW3 ruled out the possibility of the deceased having had a fresh or new heart attack brought about by the MVA. There was no evidence that the MVA caused shock and stress triggering the heart attack. The 'new myocardial infarction' that DW2 noted in his post-mortem report was not as 'new' I as at the time of the accident. DW4 was able to put the time of the heart attack to at least 12 to 24 hours earlier, putting it well outside the time of the MVA. (paras 50, 51 & 53)

(4) It was difficult, if not unsafe, for the court to accept the medical testimony adduced by the plaintiff. The court could not ignore the forensic evidence of DW2 and DW3 on the cause of death. The defendant's medical witnesses were not mere witnesses of opinion but witnesses of fact testifying as to what they did, what they had examined, the conclusions they drew and the reasons for such conclusions. Their evidence was clinical, scientific and fact-based and was far superior in quality and reliability than those presented by the plaintiff's witnesses. (paras 45 & 56)

(5) As there was no definition for the term 'bodily injury' in the policy and in the absence of any other agreement between the parties as reflected in the terms of the policy, the court found that a myocardial infarction fell within the meaning of 'bodily injury'. An injury to the heart such that it caused the heart to cease its basic function must surely fall within the definition of 'bodily injury'. (para 28)

Case(s) referred to:

Amanah Raya Bhd v. Jerneh Insurance Bhd [2005] 2 CLJ 393 CA ***(refd)***

Chiew Swee Chai v. British American Insurance Co (M) Sdn Bhd [1986] 1 CLJ 408; [1986] CLJ (Rep) 316 HC ***(refd)***

Gray and Another v. Barr (Prudential Assurance Co Ltd, third party) [1971] 2 All ER 949 ***(refd)***

Jason v. Batten (1930) Ltd; Jason v. British Traders' Insurance Co [1969] 1 Lloyd's Rep 281 ***(dist)***

Lawrence v. The Accidental Insurance Company (Limited) [1881] 7 QBD 216 ***(dist)***

Sawarn Singh Mehar Singh v. RHB Insurance Bhd [2013] 6 CLJ 790 HC ***(refd)***

Smith v. Cornhill Insurance Company Limited [1938] 54 TLR 869 ***(dist)***

Wayne Tank and Pump Co Ltd v. Employers Liability Assurance Corporation Ltd [1973] 3 WLR 483 ***(refd)***

Winspear v. The Accidental Insurance Company, Limited [1880] 6 QBD 42 ***(dist)***

For the plaintiff - Subramaniyan A Nambiar (Gurmeet Singh & Balwinderjit Singh with him); M/s Balwinderjit Singh & Co

For the defendant - S Kanagasabapathi (S Suresh with him); M/s Kanaga Suresh & Co

Reported by Ashok Kumar

A

JUDGMENT

Mary Lim J:

Background Facts

B **[1]** The plaintiff's claim is for payment under an insurance policy that was bought by the deceased, Yeoh Chee Wooi. The late Mr Yeoh had bought three policies, only one of which is under discussion.

C **[2]** A total of eight witnesses testified. The plaintiff called Yeoh Soo Theng (PW1), the daughter of the deceased; Dr Quah Cheang Lim (PW2), the deceased's doctor who he saw for 'coughs and colds'; Inspector Muhammad Haswadi Hashim (PW3), the investigating officer of the accident; and Dato' Dr Tamil D Selvam Muthusamy (PW4), a cardiologist who prepared a report found at pp. 3 and 4 of bundle A1.

[3] The defendant called Sayuthi Zainol Abidin (DW1), the driver of one of the cars that was involved in the accident; E Dr Mohammad Bahruddin (DW2), the doctor who conducted the post mortem and whose report is found at pp. 53 to 58 of bundle A; Dr Mohammad Suhani Mohd Noor (DW3) who prepared a forensic pathology review of the post mortem examination of the deceased and his report can be found at pp. 1 to 5 of bundle A2; F and Madam Chia Chooi Lin (DW4), the claims examiner of the defendant.

The Accident

[4] On 10 September 2011, at around 1.30pm, the deceased G was driving his car when an accident occurred involving his car and at least two other cars. According to PW3 and DW1, the deceased first collided into the rear of the vehicle in front of him before crossing the road divider and colliding into DW1's car which was stationary waiting for the traffic lights to change. H Thereafter, the deceased's car continued travelling to DW1's left before colliding into another car and then stopping. Together with other members of the public, DW1 approached the deceased's car to render assistance. He found the deceased "dalam keadaan tersandar di dalam keretanya". The deceased was conscious but I had breathing difficulties (macam dalam kesesakan nafas). According to DW1, the deceased's car was not travelling slowly, especially when it was heading in his direction.

[5] After the accident, the deceased was taken to Hospital Puteri Medical Centre where he passed away at around 2pm. An autopsy was performed that night, at around 9pm at another hospital, the Hospital Sultanah Bahiyah, Alor Setar. The death certificate records the cause of death as "ischemic heart disease due to coronary atherosclerosis associated with motor vehicle accident". The post mortem report states that the cause of death to be ischemic heart disease due to coronary atherosclerosis.

[6] When the claim was presented for payment, the defendant declined contending that the cause of death was outside the scope of coverage of the said policy. The plaintiff, as administrator then brought this action.

The Defendant's Reasons For Declining The Claim

[7] In a nutshell, the defendant's reason is that the cause of death did not fall within the ambit of the terms of the policy. DW4 informed the court that the claim did not fall within the terms, proviso, exclusion and conditions of the policy purchased by the deceased because his death was "directly or indirectly caused by or in connection with any form of disease or infection". Further, the deceased had not suffered any injuries be it external or internal. According to DW4, the deceased "should sustain bodily injury caused by accidental means which injury shall solely and independently of any other cause result in the insured's death". It was DW4's evidence that the deceased would have been entitled to cover if the policy was in the nature of a specific life policy, which the present policy was not. The present policy was a personal accident policy which did not have as wide a coverage as life policies. This is reflected in the higher premium charged for life policies. Also, before cover under life policies is afforded, the intended insured will generally be required to first undergo a medical check-up. In the case of a personal accident policy, a medical check-up is not required.

[8] The defendant formed its view based on the evidence presented by the plaintiff, including the medical and autopsy reports on the late Mr Yeoh. The defendant maintained that the late Mr Yeoh suffered a myocardial infarct that then caused the accident leading to his death; and that it was not the accident which caused the myocardial infarct leading to Mr Yeoh's death. For the obligation to arise under the policy Mr Yeoh must have sustained bodily injury caused by the accident and, this bodily injury must solely and independently of any other cause result in Mr Yeoh's death.

[9] Relying on the medical and autopsy reports and the testimonies of DW2 and DW3, the defendant said that the deceased had a diseased heart, was not of sound health and that it was this pre-existing condition that caused the myocardial infarction or heart attack that led to the accident. His eventual death was said to be due to the disease and not the accident.

[10] Further, the defendant maintained that even if the accident had triggered the myocardial infarct or heart attack, the bodily injury caused by the accident could not have been the sole cause independent of any other cause of the death of Mr Yeoh. This was because he had a diseased heart as reported in the post mortem report and the death certificate - that he died of "ischemic heart disease due to coronary atherosclerosis associated with motor vehicle accident".

The Plaintiff's Claim

[11] Mr Subramaniyan, learned counsel for the plaintiff submitted that having regard to the testimonies of all their witnesses, the defendant ought to have honoured the plaintiff's claim. The testimonies of PW1 and PW2 show that the deceased did not have health problems.

[12] First, PW1 testified that at her last meeting with the deceased on 9 September 2009, a day before the accident, he "looked normal" and that he made no complaints to her about his health. The deceased frequently drove from Alor Setar where he lived, to visit her in Butterworth. He made one of those routine trips the day before he died.

[13] Next, was PW2. Apart from being his doctor, he was also the deceased's friend. Whenever the deceased saw him on a professional level, PW2 would examine the deceased's breathing and take his heartbeat. According to him, he did not detect any problems with the deceased's heart. He had examined his breathing and his heartbeats and he did not detect any problems with the late Mr Yeoh's heart.

[14] So, PW2 wrote two letters in support of the plaintiff's claim. In his letter dated 30 March 2010 (p. 72 of bundle A), PW2 said that the deceased "had no history of hypertension, diabetes or underlying cardiovascular or any serious illness". Upon sight of the

post mortem report, PW2 wrote the second letter found at p. 73 of Bundle A. In this letter addressed to the Financial Mediation Bureau at Bank Negara, PW2 said:

> From the post mortem report the above named died due to "ischemic heart disease (coronary atherosclerosis). He was also involved in a MVA and we are appealing to you as to how much of the "ischemic heart disease" with heart attack was due to the shock of the MVA. There is always a possibility that the MVA with its shock and extreme stress triggered the heart attack.

[15] PW2 also told the court that the deceased was healthy, played badminton every week, and did not look stressful. He added his view that a motor vehicle accident with "shock and extreme stress" can trigger a heart attack; and that it was the case here.

[16] The plaintiff next relied on the evidence of PW3 who was said to be in the position to give credible evidence as to the probable cause of the accident. This was his answer to a specific question asked in examination-in-chief as to why there was damage to the right rear of vehicle number WJD 7830, that is, the vehicle which was in front of the car driven by the deceased:

> Kerosakan ini berlaku kerana kemungkinan besar pemandu kereta SUKOM 339 telah ikut belakang WJD 7830. Tetapi apabila WJD 7830 berhenti di susur jalan untuk beri laluan kepada kereta-kereta lain, pemandu SUKOM 339 cuba elak kereta WJD 7830 dan telah belok ke kanan. Tetapi kereta SUKOM 339 telah gesel kereta WJD 7830 dan telah terus menghala ke depan.

[17] PW3 testified that from the photographs taken of the scene of the accident and the vehicles; and based on the damage to the "Kancil" (which was the car in front of the deceased's car), the deceased's car most probably must have taken evasive action in order to avoid colliding into the Kancil which had stopped at the slip road before joining the main stream of traffic. Despite that evasive action, the deceased's car grazed the Kancil before crossing the road and crashing into PW2's car.

[18] The plaintiff also relied on the evidence of PW4, a cardiologist attached to the Damansara Specialist Hospital here in the capital, who had prepared a specialist report dated 1 November 2012 on the late Mr Yeoh. He opined that in the case of the late Mr Yeoh, the accident was a stress factor; that a sudden shock released a chemical called "catecholamine" that then

started a "cascade of events". In his report, PW4 concluded that "it is clear that the late Mr Yeoh Chee Wooi's death was due to acute myocardial infarction, but the trigger factor is the accident".

[19] From all this evidence, the plaintiff took the position that because the late Mr Yeoh "had no history of hypertension, diabetes or underlying cardiovascular or any serious illness, there is always a possibility that the MVA with its shock and extreme stress triggered the heart attack". In other words, Mr Yeoh's death was within the cover of the policy in which case the defendant ought to have paid the claimant plaintiff.

Findings Of The Court

[20] Recently, in the case of *Sawarn Singh Mehar Singh v. RHB Insurance Bhd* [2013] 6 CLJ 790, (*Sawarn Singh*), this court had occasion to examine and render observations on the interpretation and construction of contracts of insurance. It is useful to set those observations out:

> [18] Quoting from ER Hardy Ivamy in "*General Principles of Insurance Law*" (page 3, 4th edition, Butterworths, 1979, the plaintiff has well-described what a contract of insurance is:
>
> > A contract of insurance in the widest sense of the term may be defined as a contract whereby one person, called the "Insurer", undertakes, in return for the agreed consideration, called the "Premium", to pay to another person, called the "Assured", a sum of money, or its equivalent, on the happening of a specified event.
> >
> > The specified event must have some element of uncertainty about it; the uncertainty may be either (a) as in the case of life insurance, in the fact that, although the event is bound to happen in the ordinary course of nature, the time of the happening is uncertain; or (b) in the fact that the happening of any event depends upon accidental causes, and the event, therefore, may never happen at all. In the latter case, the event is called an accident.
> >
> > The specified event must further be of a character more or less adverse to the interest of the assured, or in other words, the accident must be calculated, if it happens, to result in loss to the assured.
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> [19] Once the terms and conditions are acceptable to both parties, it goes without saying that not unlike ordinary contracts, the terms and conditions in the contract of insurance will be binding

on all parties. This was highlighted by the Privy Council in *New India Assurance Co Ltd v. Yeo Beng Chow* [1972] 1 MLJ 231 where Viscount Dilhorne said that "... if conditions inserted by insurance companies are accepted by the insured, they are binding upon him." A

[20] In interpreting and construing the terms of the said policy in order to determine the intention of the parties, the court must always look to the whole policy. The present insurance policy is a contract of insurance. It is subjected to the same "general rules of interpretation as any other written document". The words used must "*prima facie* to be construed "in their plain, ordinary, popular meaning, rather than their strictly precise, etymological, philosophical, or scientific meaning"... Only if there is a clause in the policy which is open to two constructions, the court will construe it *contra proferentum*" - per Raja Azlan Shah FJ (as His Highness then was) in *Malaysia National Insurance Sdn Bhd v. Abdul Aziz bin Mohamed Daud* [1979] 2 MLJ 29, 31. B C D

[21] In this respect, the Court of Appeal's decision in *Amanah Raya Bhd v. Jerneh Insurance Sdn Bhd* [2005] 2 CLJ 393 is also insightful. It reminded that the interpretation of contracts of insurance is the same as with any other contracts for insurance contracts are as mentioned earlier, contracts. The Court of Appeal quoted Fisher J in *Jason v. Batten* 1930 Ltd; *Jason v. British Traders' Insurance Company Ltd* [1969] 1 QB 281 who said at p. 290 the following: E

> A policy of insurance is subject to the same rules of construction as any other written contract. The words used in it must be given their plain, ordinary meaning in the context of the policy looked at as a whole, subject to any special definitions contained in the policy. In the case of ambiguity the *contra proferentum* rule will apply but apart from this there is no rule of law which requires me to strain any language of the policy in favour of or against the insured person. F G

[22] The numerous case law show that at the end of the day, the decisions turned on the language of the particular policy. It can only be on all fours if the language is the same. What, however, may be extracted would be the principles applied that may aid this court in interpreting this particular policy. H

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[21] The contract of insurance here is no different. The relevant terms of this policy marketed as a "Special PA Program 2" (the said policy) provide:

> NOW THIS POLICY OF INSURANCE WITHNESSETH that if during the Period of Insurance the Insured shall sustain bodily injury caused by accidental means which injury shall solely and independently of any other cause result in the Insured's death or disablement as hereinafter defined or necessitate medical and/or hospital and surgical treatment as hereinafter defined the Company will subject to the terms, provisos, exclusions and conditions of and endorsed on this Policy (which terms, provisos, exclusions and conditions shall so far as the nature of them respectively will permit be deemed conditions precedent to the right to recover under this Policy) pay to the Insured or in the event of death to the Insured's legal representative the sum or sums of money specified in the Schedule and in accordance to the Scale of Benefits.

[22] Aside from the above, the said policy contains provisions on excluded matters:

> **Exclusion**
>
> This policy does not cover death or any injury/disablement directly or indirectly caused by or in connection with any of the following:
>
> 1. War, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny or usurped power, military of popular uprising.
> 2. Insanity, suicide (whether sane or insane), intentional self-inflicted injuries or any attempt thereat.
> 3. Any form of disease, infection or parasites and Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC) or Human Immunodeficiency Virus Infection (HIV). However the named diseases specifically mentioned under Benefits D and E may be covered under specific circumstances as detailed therein.
> 4. Childbirth, miscarriage, pregnancy or any complications thereof.
> 5. Provoked murder or assault.
> 6. While travelling in an aircraft as a member of the crew, except
> 7. Only as a fare-paying passenger in an aircraft licensed for passenger service.

[23] From the terms and conditions of the policy, the plaintiff will therefore need to satisfy the following:

(i) that the deceased sustained bodily injury;

(ii) that such bodily injury was caused by accidental means; and

(iii) that such bodily injury solely and independently of any other cause resulted in the deceased's death.

[24] In addition and for the purposes of the facts of this claim, the plaintiff will have to show that the terms of the exclusion clause do not apply; that is to say that the death here was not directly or indirectly caused by or in connection with "any form of disease". This requirement sits consistently and harmoniously with the primary condition that the death has to be solely and independently due to bodily injury caused by the accident.

Did The Deceased Sustain Any Bodily Injury Caused By Accidental Means?

[25] It is not in the least disputed that the deceased met with an accident. In fact, who caused the accident is irrelevant for this case. What is in dispute is the operation or otherwise the terms of the said policy.

[26] The defendant maintained that because the deceased did not suffer any bodily injury including any external, internal or silent injuries as a result of the accident, the terms of the said policy were not engaged. This is said to be borne out by the post mortem report.

[27] On this matter of "bodily injury", this was my view expressed in *Sarwan Singh* that I referred to earlier. In that case, this court took the position that since the term 'bodily injury' was not defined in the policy, it was reasonable to say that a myocardial infarction or heart attack will fall within the definition or understanding of "bodily injury":

> [31] Let me start with the term "bodily injury". Given that this term is nowhere defined the said policy, it is reasonable to say that the term can connote an injury to any part of the body, including the heart. That injury need not be visible or severe. What it needs to be is an injury that causes death or permanent disablement. In this case, the heart "died". I find support for this view in the case of *In re An Arbitration between Kate Scarr and The General Accident Assurance Corporation, Limited* [1905] 1 KB 387.

A In that case, the deceased's heart was in a weak and unhealthy condition. As a result of physical exertion, he died of heart failure. The claim against the insurance company was dismissed because the injury which resulted in the death of the assured was not caused by accidental means. This is what Bray J said at page 393:

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> The injury to the heart, which I assume to be bodily injury, seems to me to have been caused by the violent exertion, and the violent exertion was intended and not accidental. There was no slip or fall or blow. He intended to push and pull, and he pushed and pulled.

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[28] Similarly, there is no definition for the term "bodily injury" in this policy. I see no reason why the view held in *Sarwan Singh* should not prevail here. An injury to one of the most vital organs in the body, the heart such that it causes the heart to cease its basic function surely must fall within the definition of "bodily injury". In the absence of any other agreement between the parties as reflected in the terms of the said policy, I am therefore minded to find that a myocardial infarction falls within the meaning of "bodily injury".

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[29] Accepting that "bodily injury" can include an injury to the heart that causes its death, the next consideration is what caused that injury, or what was the proximate cause of the injury? Was it the accident or some other cause? If it was the accident, was it the sole and independent cause? If the answer is in the affirmative, then the plaintiff ought to be entitled to its claim. If however, the answer is in the negative, then the plaintiff's claim must be dismissed.

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G **[30]** Hence, it is plain, and both parties agree too, that the single issue that the court needs to determine is the cause of death. Is the heart attack or myocardial infarct which led to Mr Yeoh's death a bodily injury caused, solely and independently of other causes, by the accident? Or, did Mr Yeoh in effect suffer a myocardial infarct which then led to the accident and his eventual death?

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[31] After examining the evidence and more particularly, after evaluating the evidence of PW2, PW4, DW1 and DW3, I am compelled to agree with the defendant that the myocardial infarction or heart attack was not caused by the accident. The evidence showed that the deceased in fact had a heart attack very much earlier in the day. It would appear that it was a heart attack

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that neither he nor anyone who has stepped forward to testify on his behalf was even aware of. It would appear from the evidence too, that the accident really had nothing to do with his eventual death. In short, the deceased would have died even while sitting quietly at home, or even when sleeping. And, from the evidence led by the defendant, this heart attack or myocardial infarction was as a result of an "ischemic heart disease due to coronary atherosclerosis". He died as a result of his diseased heart. I shall deal with this in greater detail later.

[32] But, dealing first with the testimonies of PW1 and PW3. With respect, nothing really turns on their evidence. PW1 was merely telling the court how she remembered her late father from when she last saw him. As will be seen, the condition of the deceased was such that it was the least expected and the furthest from everyone's mind at the material time.

[33] In relation to PW3's evidence, his view as to how the accident happened taken together with DW1's evidence, that the Kancil stopped at the slip road instead of "flowing smoothly into the main road", the deceased had swerved to the right to avoid crushing into the Kancil; hence the damage to the two vehicles; is really of "neutral" value. It still does not explain when the deceased had his heart attack. That question is best answered by the medical experts.

[34] Turning now to the medical experts. I propose to deal in detail with each of the evidence of the medical experts. In a case of this nature, it would not only be useful but easier to appreciate the reasons for my decision if the relevant medical documents are set out *in extenso* so that the contents may be fully and properly appreciated and understood.

[35] First, the evidence of PW2. Aside from the several letters that he wrote, he told the court that the deceased was a healthy person who did not suffer from hypertension or high blood pressure; and that the deceased did not appear stressed. According to him, the deceased's "usual complaints were coughs & colds only. He had no history of hypertension, diabetes or underlying cardiovascular or any serious illness." As mentioned earlier PW2 was of the opinion that the accident was the proximate cause of death of the deceased.

[36] Then, there is PW4's testimony. He talked about "trigger" events that bring on a heart attack. This is what he said in his report:

MEDICAL REPORT

RE: YEOH CHEE WOOI
NRIC NO: 531203-02-5105

The late Mr. Yeoh Chee Wooi, NRIC No: 531203-02-5105, was brought to the Putra Medical Centre on 10th September 2009 following a motor vehicle accident. He was unfortunately, pronounced dead on arrival.

I refer to the report of the post mortem examination which indicated that the death was brought about by ischemic heart disease due to coronary atherosclerosis and a new Myocardial Infarction which was rapidly fatal in nature.

I refer to the death certificate (538214), the cause of death reported as ischemic heart disease due to coronary atherosclerosis associated with motor vehicle accident.

I refer to the letter from Dr. Quah Cheang Lim, MBBS (MAL), of Klinik CL Quah, who was the General Practitioner of the deceased. He has indicated in his letter that the deceased had no history of Hypertension, Diabetes or underlying cardiovascular disease or serious illness. His letter indicated that the deceased had not presented to him with any complaint of heart disease.

It is clear that the deceased succumbed to Acute Myocardial Infarction. Myocardial infarction (Heart Attack) is a condition where there is sudden cessation of blood flow in the major coronary arteries which results in heart muscle death, leading to fatal outcome in many. In a great majority of patients, the very first presentation of coronary artery disease is Myocardial Infarction, in other words, these patients are not aware of any symptom related to the heart prior to the heart attack.

Myocardial Infarction occurs when the coronary atherosclerosis or fatty plaque within the coronary artery undergoes rupture or destabilisation. The fatty plaque is usually contained within a wall in the lumen of the coronary artery and there is no exposure of the contents of the plaque to the blood circulation. Sudden rupture of the wall of the plaque results in exposure of the contents to the blood circulation, resulting in a cascade of events leading to blood clot/thrombus formation. The sudden complete occlusion of the artery results in myocardial infarction (death of the heart muscle).

There are usually trigger factors which lead to plaque rupture which results in Acute Myocardial infarction. The trigger factors lead to rupture of the wall that contains the plaque. Many of these trigger factors comes from the sudden release of chemicals such as Catecholamine which results in elevation of blood pressure, as well as increased stress on the coronary plaque wall.

In the case of the late Mr. Yeoh Chee Wooi, the accident is a stress factor. A sudden shock such as this will result in the release of Catecholamine and increase the blood pressure acutely, resulting in increased stress on the wall of the coronary plaque. This sudden stress on the coronary plaque is a recognised factor in plaque rupture and associated Acute Myocardial Infarction.

Thus, in the case of the late Mr. Yeoh Chee Wooi, the Myocardial Infarction could have been brought about by the sudden changes in the dynamics of his blood pressure and the chemical levels in his body as a physiological response to the accident.

In conclusion, it is clear that the late Yeoh Chee Wooi's death was due to Acute Myocardial Infarction, but the trigger factor is the accident.

[37] Then, there are DW2 and DW3's testimonies. DW2 was the doctor who performed the post mortem on the deceased. This was his report:

REPORT OF POSTMORTEM EXAMINATION
THE CASE OF: YEOH CHEE WOOI

By virtue of a warrant of the "Police DiRaja Malaysia" (Kota Setar Traffic report no. 6299/2009) I, Dr. MOHAMMAD BAHRUDDIN, the undersigned on 10.09.2009 @ 10:00 PM within the Mortuary of Hospital Sultanah Bahiyah, made a postmortem examination on the body of Yeoh Chee Wooi.

IC NO : 531203-02-5105 AGE : 56 Y/O
SEX : MALE RACE : CHINESE BY APPEARANCE
DEATH : 10.09.2009 @ 09:00 PM (brought in dead to Hospital Sultanah Bahiyah)
Police Officer in charge: I/19316 MUHAMMAD HASWARDI BIN HASHIM

The body was identified by:

1. I/19316 MUHAMMAD HASWARDI BIN HASHIM
2. YEOH SANG YE (son of the deceased)
   IC No: 870612-02-5233

HISTORY
(from the police)
The deceased was allegedly involved in an accident near traffic light Simpang Kuala on 10.09.2009. The accident occurred when the deceased's car hit behind car in front of him then crossing road divider and hit another car in front of him. The police have requested for a postmortem examination to determine the cause of death.

CLOTHING AND PERSONAL EFFECTS

1. Blue shirt.
2. Blue long pant.
3. Grey underwear.
4. Black/grey stock.

EXTERNAL EXAMINATION

Height	172 cm.
Estimated weight	80 kg.
Build	Medium.
Hygiene	Good.
Race	Chinese by appearance.
Tattoos/Scars etc	None.
Hair	Very short grey hair.
Eyes	
Color	Dark brown.
Pupils	Fixed and dilated
Conjunctiva	No petechiae.
	No periorbital hematoma.
Face	Congested.
Nose	No nostril bleeding, no fracture of nasal bone, Bloody frothy.
Mouth	Unremarkable.
Teeth	Natural teeth.
Ears	No ear canal bleeding noted.
Upper limbs	No edema.
Fingernails	Short bluish nail bed.
Lower limbs	No edema.
External Genitalia	Normal male, uncircumcised.
Anus	Healthy.
Rectal temperature	The body felt relatively warm.
Rigor mortis	The rigor mortis was not fully established.
Hypostatic lividity	Present at the back and the part of contract point.

MARKS OF INJURY

1. The body have no mark of injury.

INTERNAL EXAMINATION HEAD

Scalp	No subgaleal hematoma noted.
Skull	No fracture of the base or calvarium detected.
Meninges	Healthy, no evidence of meningitis or hemorrhage.
Brain	The brain weighed 1380 gram. On sectioning there was no mark of injury or any pathological detected. The circle of willis was atheroma.

MOUTH, THROAT & NECK STRUCTURES

Tongue	No bite mark or hemorrhage noted.
Thyroid	Not enlarged and healthy.
Larynx	Normal mucosa. No hyoid bone or thyroid cartilage fracture detected.
Carotids	Moderate degree of atheroma noted.
Cervical muscles	Not contused.
Cervical spine	No fracture.

THORAX

Rib cage	No rib or sternum fracture detected.
Pleural cavities	No effusion or hemothorax.

Esophagus	Normal mucosa, reflux gastric content.	A
Trachea and air passages	Normal mucosa. Bloody frothy in the lumen.	
Lungs	The right and left lungs weighed 380 gram and 320 gram respectively. Both of lungs mild edematous noted. No fibrosis or pneumonic changes noted.	
Mediastinum	Unremarkable.	
Pericardium	Unremarkable.	B
Heart	The heart weighed 400 gram and was normal configuration. The valves and chambers were unremarkable. No septal defect noted. The thickened of the wall left and right ventricle were 2.1 cm and 0.8 cm at about 1 cm below the atrium ventricular ring. The coronaries arose were normally from the aorta. The left anterior descending coronary artery demonstrated 75% to 90% narrowing of the luminal by atherosclerosis. The right coronary artery demonstrated 90% narrowing of the luminal by atherosclerosis at the 2 cm proximal from ostium about 2 cm segment. The right coronary artery demonstrated 90% luminal narrowed by atherosclerosis at 1 cm proximal ostium about 2 cm segment. New myocardial infarction over the left ventricle noted. Patchy fibrosis at left ventricle noted. No myocardial hemorrhage noted.	C D
Aorta	Complicated atheroma noted.	E
Pulmonary artery	No thromboembolus	

ABDOMEN

Peritoneum	No ascites or hemoperitoneum noted.	
Diaphragm	Unremarkable.	
Stomach	Normal mucosa, partially digested rice meal about 500ml.	F
Small intestine	Unremarkable.	
Large intestine	Unremarkable.	
Mesenteric	Unremarkable.	
Liver	The liver weighed 2380 gram, patchy fatty changes.	
Biliary system	Patent, no gallstones.	
Pancreas	No hemorrhage.	G
Spleen	The spleen weighed 320 gram, no focal lesion.	
Adrenals	No hemorrhage.	
Kidneys	The right and left kidney weighed 240 gram and 220 gram respectively. The capsules were stripped without difficulty with revealed fine granular cortical surface area.	
Ureters	Healthy.	H
Bladder	No calculi, clear urine.	
Reproductive organs	Normal.	

SKELETON

No fracture of the vertebrae, pelvic or long bone detected.

LABORATORIUM I

Blood and urine for toxicology have been send to Malaysia Chemistry Department.

SUMMARY AND CONCLUSION

1. The deceased was an adult Chinese male who has been positively identified by his son as the above named person.
2. There was no significant mark of injury found on the body of the deceased that could have caused or contributed to his death at that moment in time.
3. Gross features of the postmortem examination of the heart showed severe coronary atherosclerosis and new myocardial infarction that was rapidly fatal in nature.
4. Finding of the postmortem examination are consistent with that a death brought upon by ischemic heart disease due to coronary atherosclerosis.

In my opinion, the cause of death was:

1. Ischemic heart disease due to coronary atherosclerosis.

[38] DW3 is a consultant forensic pathologist and head of department of forensics medicine at the Hospital Sultanah Bahiyah at Alor Setar. He prepared a report based on the tissue samples taken from the deceased during the post mortem. He told the court that these samples were taken for histopathological examination "as a matter of course at our hospital". According to him, "It has become a standard practice with our hospital since 2008 and we have found that these samples help refine the gross or naked eye findings made during the post mortem examination". Through microscopic examination of the samples, "certain diagnosis or pathologies that were not apparent during the gross or naked eye post mortem examination" can be uncovered. In the case of the deceased, tissue samples were taken from "a kidney, the heart, and the left anterior descending coronary artery, which is one of the three major coronary arteries". The samples were then processed into 13 slides and kept.

[39] Relying on these 13 post mortem histology slides, draft post mortem notes, the post mortem report, the digital photographs and the post mortem toxicology report, DW3 prepared the following report:

FORENSIC PATHOLOGY REVIEW OF THE POSTMORTEM EXAMINATION OF THE BODY OF YEOH CHEE WOOI

AUTOPSY NO.: A 237/2009

Name of deceased: Yeoh Chee Wooi

I.C. no: 531203-02-5105

AGE: 56 years old SEX: Male RACE: Chinese

Date of time of death: 10/9/2009 (Brought in dead to Hospital Sultanah Bahiyah @ 9.00pm)
Police report no: Kota Setar traffic report 6299/2009
Police officer in charge: INSP/19316 Muhammad Haswardi bin Hashim
Date and time of postmortem examination: 10/9/2009, @ 10.00pm
Place of postmortem examination: Mortuary of Hospital Sultanah Bahiyah.

Postmortem examination performed by: Dr. Mohammad Bahruddin
MD (Unair)
Medical Officer
Department of Forensic Medicine
Hospital Sultanah Bahiyah

CIRCUMSTANCES OF DEATH
(from the police)

The deceased was allegedly involved in a vehicular crash on 10/9/2009, @ 1.30pm. The deceased's car, after having rear-ended a car at a traffic light junction, had then crash into another car in the opposite lane. A report lodge by the decedent's daughter (K006305/2009) indicated that the deceased had been taken from the crash scene to the Putra Medical Center.

There is no documentary evidence available for this review to indicate whether the deceased had died at the Putra Medical Center, or whether he was brought in dead to the center.

REVIEW OF THE POSTMORTEM EXAMINATION

The following postmortem documentation has been made available for review:

1. The Draft of Postmortem Examination; autopsy case file archived in the Medical Records Unit of Hospital Sultanah Bahiyah.
2. Digital photographs of the postmortem examination; 9 photographs archived in the Department of Forensic Medicine, Hospital Sultanah Bahiyah.
3. Postmortem histology slides; 13 slides archived in the Department of Forensic Medicine, Hospital Sultanah Bahiyah.
4. The postmortem toxicology report; present in the autopsy case file.
5. The Report of Postmortem Examination; present in the autopsy case file.

After perusal of the postmortem documentation, the following observations may be made:

1. A complete postmortem examination has been performed on the body of the deceased. The extent of the postmortem examination conducted include an external examination of the body, an internal examination, the collection and submission of biological samples for toxicological analysis, and the retention and processing of selected tissue samples for forensic histopathological examination. However the results of the toxicological analysis and histopathological examination have not been included in the Report of Postmortem Examination. It is also noted that whilst the tissue samples collected for histopathological examination have been listed in the Draft of Postmortem Examination, they were omitted from the Report of Postmortem Examination.

2. It has been documented in the draft and report of postmortem examination that the body was still relatively warm, and that the rigor mortis was not fully established at the time of postmortem examination (@ 10.00 pm, 10/9/2009). These postmortem changes suggest an estimated postmortem interval of less than about 6-9 hours from the time of examination[1]. If indeed the deceased had been taken to the Putra Medical Center after the crash, the medical center should be able to provide documentary evidence as to whether the deceased had been declared as 'brought in dead', or had in fact died at the center.

3. Neither the draft nor the report of postmortem examination documented the presence of any mark on the body of the deceased that would suggest medical intervention around the time of his death. Nevertheless, three of the postmortem photographs showed evidence of iatrogenic needle mark on the back of his left hand, suggesting that resuscitation has probably been attempted on the deceased.

4. The available postmortem photographs do not refute the findings of the external examination as documented in the draft and report of postmortem examination. In particular, in view of the alleged circumstances of his death, the photographs showed no discernible mark of external injury on the body.

5. The findings of the internal examination as documented in the draft and report of postmortem examination showed no evidence of injury to his internal organs.

6. The internal examination as documented in the draft and report of postmortem examination showed the following significant gross (macroscopic) pathologies (there are no postmortem photographs of these findings):

6.a. There was significant atherosclerosis of his major arteries, i.e. the aorta and the carotids. This pathology is commonly encountered during postmortem examinations of middle-aged males.

6.b. There was granularity of the cortical surfaces of the kidneys. Cortical granularity may suggest underlying chronic diseases involving the kidneys such as diabetes mellitus and hypertension, i.e. diabetic nephrosclerosis and hypertensive nephrosclerosis respectively.

6.c. The heart was heavier than normal for a male of his height and weight, and there was left ventricular hypertrophy. In the absence of abnormality to the heart valves, these findings would suggest that the deceased was hypertensive.

6.d. Two of his three major coronary arteries, the left anterior descending and the right coronary arteries, showed severe atherosclerosis where their respective luminal areas have been occluded by 75-90%. A coronary artery disease with such severe occlusion of the coronaries can lead to significant myocardial insufficiency and eventual ischemic damage to the heart in the form of myocardial infarction. The increased heart mass in left ventricular hypertrophy will further compound his susceptibility to myocardial insufficiency. The patchy fibrosis in the left ventricle of the heart as documented is gross evidence of ischemic damage to the heart consequent to the severe coronary atherosclerosis. It has also been documented that 'new

myocardial infarction' was seen in the left ventricle, without any further gross description provided. This will be subject to histopathological confirmation (see below).

It should be noted that an occlusion of at least 75% of any of the three major coronaries is regarded as capable of causing sudden death, even in the absence of gross evidence of ischemic damage to the heart[2].

(there is no paragraph 7)

8. Another significant finding of the internal examination, *albeit* non-pathological, was the presence of 500ml of partially digested rice meal in the stomach. This evidence would further suggest that his death had probably taken place not later than 6 hours after having ingested that meal[3].

9. It has been documented in the Draft of Postmortem Examination that tissue samples have been taken from the heart, the left anterior descending coronary artery, and a kidney for forensic histopathological examination. An examination of the 13 slides for the purpose of this review showed the following:

Tissue	Histology result
Kidney (H&E stain)	Section showed arteriosclerosis and arteriolosclerosis, a few sclerosed glomeruli, and scattered small foci of interstitial fibrosis and interstitial lymphocytic infiltrates. No changes to suggest diabetes mellitus.
Left anterior descending coronary artery (H&E stain)	Severe coronary atherosclerosis seen with dystrophic calcification.
Heart (H&E and PTAH stain)	The sections appeared to be from the wall of the left ventricle. The sections showed hypertrophied myocytes, interstitial fibrosis, and areas of hypereosinophilic, anucleic myocytes with ontraction bands and associated nascent eutrophilic infiltration of the interstitium, and a few small foci of interstitial hemorrhage.

The following conclusions may be drawn from the histopathological examination:

9.a. There are hypertensive changes in the kidney.

9.b. Histology of the coronary artery confirms the atherosclerotic occlusion seen on gross examination.

9.c. The histology of the heart confirms the presence of acute myocardial infarction in the left ventricle of the heart. The histological features of the acute myocardial infarction suggest that the infarct was probably 12-24 hours old at the time of his death[4]. The histology of the heart also supports the gross observation of left ventricular hypertrophy.

10. The post-mortem toxicology report from Jabatan Kimia Malaysia (received date 7/4/2010) showed 32 mg% ethanol in the decedent's blood but no common drugs detected, and no common drugs and no ethanol detected in his urine. Given its low level in the blood and absence in the urine the ethanol detected was, in all probability, a postmortem artefact and was of no consequence in relation to his death[5].

11. The final cause of death statement of 'Ischemic heart disease due to coronary atherosclerosis', as given in the Report of Postmortem Examination, is in agreement with the documented gross postmortem findings and the findings of the histopathological examination undertaken for this review.

COMMENTS

1. From the available postmortem documentation, it may be concluded that a complete postmortem examination has been conducted on the body of the deceased, and that the examination has been performed to a satisfactory standard[6].

2. Whilst it would have been good practice that any forensic histology result should be included in the Report of Postmortem Examination, its absence does not detract from the fact that the gross postmortem findings alone were adequate for formulating the given cause of death statement. Nevertheless, histology would have enabled further refinement of the final diagnosis to "Acute myocardial infarction".

3. The absence of external injury on the body of the deceased does not categorically refute the allegation that he had been in a vehicular crash. It may be that the vehicular crash was not sufficiently severe to injure the deceased, as the case would be with low velocity collisions. The use of seatbelts by car occupants will also reduce the likelihood of external injuries during low velocity collisions[1,7,8].

4. The postmortem examination has shown the presence of hypertension and ischemic heart disease. These are pre-existing chronic natural diseases that precede the alleged vehicular crash and have the potential to cause sudden death.

5. The histology of the heart showed evidence that his acute myocardial infarction was already about 12-24 hours old at the time of his death, i.e. the onset of his myocardial infarction preceded the alleged vehicular crash. He was already suffering from an acute myocardial infraction when he was involved in the crash.

6. In our daily forensic pathology practice, it is not unusual for us to encounter cases of sudden cardiac deaths with demonstrable acute myocardial infarcts that are already a few days old, and yet the circumstances of death seem to indicate that the decedents have been able to perform their daily activities up to the time of their sudden collapse and death. In other words, the onset of an acute myocardial infraction does not necessarily lead to sudden incapacitation nor significantly diminish the ability to carry out complex functions such as driving a car. However, sudden collapse and death can occur eventually as the myocardial infraction progresses.

7. It is evident from the available postmortem documentation that the vehicular crash did not cause his acute myocardial infarction. To the contrary; it can be reasonably concluded that his underlying natural disease was the cause of the vehicular crash[8, 9, 10, 11]. In cases such as this, the main cause of deaths was ischemic heart disease. Should collision occur, the injuries tend to be minor as sudden collapse of the driver would cause foot pressure on the accelerator to be release[1, 8]. This will be in agreement with the low velocity collisions as indicated by his circumstances of death.

8. From the available postmortem documentation, it is not possible to categorically ascertain whether his death had occurred immediately prior to the crash, during the crash, or soon after the crash. What can be concluded is that he had died from natural disease around the time of the vehicular crash, i.e. in association with operating a motor vehicle[8].

9. Whether he would have died from his acute myocardial infarction at that moment in time had he not been involved in a vehicular crash is a moot point because an acute myocardial infraction alone can cause death without further need for an intervening stressful event.

sgd

...
18/11/2012
DR. MOHD SUHANI BIN MOHD NOOR

[40] Now, comparing the testimonies of the two sets of doctors called by both parties; let me start with PW2. In my view, his testimony merely tells of the deceased's apparent state of health as and when the deceased had reason to see him on a professional level. As testified by PW2, it would be for the deceased's usual "coughs and colds". During those times, PW2 did routine tests such as taking the deceased's blood pressure and sugar levels. With respect to PW2, he unfortunately possesses neither the expertise nor had he conducted the relevant tests at the material time to confirm this general well-being that he described of the deceased. He is a general practitioner and the complaints that the deceased saw him from time to time, with respect, sums up his expertise for the purposes of this issue.

[41] I can appreciate his concern, as a friend and as the deceased's doctor but faced with scientific and empirical evidence which is not only compelling but overwhelming, this court is not persuaded by PW2's testimony. PW2's evidence on how a motor vehicle accident can cause shock and stress which could trigger a heart attack is of and for general information but it is not entirely relevant or material to determining the issue here. Coming from a man of science, the court is more than prepared to accept that general proposition. Absent of evidence to the contrary, this court is even prepared to accept that that may well have been the case

here. However, as will be seen, PW2 view remains but a general proposition and starting point for consideration as there is clear evidence to the contrary.

[42] And, contrary to PW2's view, even the general health of the deceased was not what was evaluated by him. From DW3's examination of the deceased's kidney and heart, it would appear that even unknown to PW2, the deceased actually had chronic underlying problems such as diabetes mellitus and hypertension – see paras. 6.b and 6.c of DW3's report.

[43] Moving on to PW4's testimony. In preparing his report found at pp. 3 and 4 of bundle A1, PW4 referred to the post mortem examination, the death certificate and PW2's letter as the basis. PW4 explained in his report what a myocardial infarct is and how it occurs. According to him, myocardial infarction is "death of the heart muscle" and it occurs when "the coronary atherosclerosis or fatty plaque within the coronary artery undergoes rupture or destabilisation. The fatty plaque is usually contained within a wall in the lumen of the coronary artery and there is no exposure of the contents of the plaque to the blood circulation. Sudden rupture of the wall of the plaque results in exposure of the contents to the blood circulation, resulting in a cascade of events leading to a blood clot/thrombus formation." It is this "sudden complete occlusion of the artery" that results in myocardial infarction.

[44] He discussed the role of what he called "trigger factors" that lead to this plaque rapture. He told the court that "many of these trigger factors comes from the sudden release of chemicals such as catecholamine which results in an elevation of blood pressure as well as increased stress on the coronary plaque wall". PW4's conclusions as to what caused the heart attack were drawn after examining or evaluating the contents of the several documents referred to him; namely the post mortem report, the death certificate and the letter prepared by PW2. Prior to the report, he had never seen the deceased or treated him in any way. He did not conduct any examination of any specimen. His evidence was entirely from the documents before him. Those documents did not include the toxicology results or the examination of the tissue samples taken from the deceased during the post mortem. It is unclear if he was even aware of the existence of these samples and results.

[45] In comparison, both medical witnesses called by the defendant were not mere witnesses of opinion but witnesses of fact testifying as to what they did, what they examined, the conclusions they had drawn and, the reasons for such conclusions. From their reports and oral testimonies, it was immediately obvious that their evidence is clinical, scientific, fact based. And, with respect, such evidence was far superior in quality and reliability than those presented by the plaintiff's witnesses.

[46] In the case of DW2, he was essentially reporting on the results of the post mortem conducted by him. He had conducted a complete post mortem on the deceased. He made a positive finding that there was "no significant mark of injury found on the body of the deceased that could have caused or contributed to his death at that moment in time." He had examined the heart and after recording his findings, he concluded that the "gross features of the post mortem examination of the heart showed severe coronary atherosclerosis and new myocardial infarction that was rapidly fatal in nature". With that, he opined that the cause of death was "ischemic heart disease due to coronary atherosclerosis". According to him, his opinion is consistent or supported by his findings in the post mortem.

[47] I do not find any errors in his report and there are no suggestions that there are any. DW2's report was reviewed by DW3 who opined that while "it would have been good practice that any forensic histology result should be included" in DW2's report, the absence of such a result "does not detract from the fact that the gross post mortem findings alone were adequate for formulating the given cause of death statement". In DW3's view, DW2's "examination has been performed to a satisfactory standard". Most importantly, he agreed with DW2's opinion on the cause of death; that it was "ischemic heart disease due to coronary atherosclerosis".

[48] Where DW3's report is concerned, it cannot be denied that it is a detailed and extremely well-considered study and analysis of the matters presented before him. Each act, finding, view and conclusion is analysed carefully; catalogued or recorded properly; explained and backed up by the data and test results that he had personally conducted. He was methodical and painstaking in his evaluation, providing reading references wherever appropriate or

necessary. Even in court, he gave evidence thoughtfully and professionally; quite unfazed by cross-examination and remained steadfast in his views.

[49] In his review, DW3 used *inter alia* the digital photographs taken of the post mortem in order to verify DW2's findings. From these photographs, he verified DW2's finding that there were no external injuries or discernible mark of external injury on the body of the deceased. At the same time, he found evidence of "iatrogenic needle mark on the back of the deceased' left hand, suggesting that resuscitation has probably been attempted on the deceased". Impliedly, he also confirmed DW2's findings that the deceased did not sustain any internal injuries.

[50] DW3 had further ruled out the possibility of the deceased having had a fresh or new heart attack brought about by the accident. He noted that DW2 had "documented that 'new myocardial infarction' was seen in the left ventricle" - see para. 6.d. A histopathological confirmation was then conducted and at para. 9, DW3 records this:

> The histology of the heart confirms the presence of acute myocardial infarction in the left ventricle of the heart. The histological features of the acute myocardial infarction suggest that the infarct was probably 12-24 hours old at the time of his death[4]. The histology of the heart also supports the gross observation of left ventricular hypertrophy.

[51] In other words, just as DW2 had recorded that the deceased had had previous episodes which were not known till the post mortem (even PW2 was not aware of this); this "new myocardial infarction" was not as "new" as at the time of the accident. In fact, DW4 was able to put the time of the heart attack to quite precise time blocks; at least 12 to 24 hours earlier; putting it well outside the time of the accident. Based on the available post mortem records and the condition of the deceased's body, DW3 was able to estimate "a post mortem interval of less than 6-9 hours from 10pm on 10 September 2009" and that the deceased "had probably been dead for nine hours at most by the time the body was examined in the mortuary at 10pm". That would put the time of death at the earliest, 1pm and the latest, at 4pm.

[52] Based on histological features of the myocardial infarction, DW3 testified that the infarct "was probably 12-24 hours old at the time of death, meaning that his heart attack probably started

about 12-24 hours prior to his death". He was able to come to this conclusion based on his examination of the "stages of microscopic changes that a myocardial infarction will undergo over a period of time". It was his testimony that "from its onset until it has completely healed", a myocardial infarction will undergo various stages of microscopic changes. However, where death occurs, the "healing process will terminate and become frozen ... The stage of the healing process at which the person dies will enable the forensic pathologist to give a reasonable estimate of the age of the infarct at the time of his death."

[53] Further, there is no evidence at all that the accident, and that is when the deceased collided into the Kancil caused shock and stress thereby triggering a heart attack. With DW3's testimony, the suggestion that the accident caused a fresh or new heart attack has been ruled out. Unlike the facts in *Jason v. Batten (1930) Ltd; Jason v. British Traders' Insurance Co* [1969] 1 Lloyd's Rep 281, or even those in *Lawrence v. The Accidental Insurance Company (Limited)* [1881] 7 QBD 216 and *Winspear v. The Accidental Insurance Company, Limited* [1880] 6 QBD 42; the accident here had nothing to do with the deceased's myocardial infarction.

[54] In his evidence, DW3 also quite categorically addressed the issue of trigger factors and PW4's conclusion that the accident was the trigger that caused the myocardial infarct that led to Mr Yeoh's death. His reply is extremely telling. He told the court that PW4's "clinical conclusion" may be "plausible" to make without the benefit of a post mortem examination. He added that:

> However the histology of the heart clearly showed that the deceased was already suffering from a myocardial infarction that had preceded the accident by a substantial period of time.

[55] He further testified that "based on the post mortem findings as well as the histological examination, the deceased had died from a disease rather than an injury to his person". One may add that since the heart attack was already of some hours old, 12 to 24 hours earlier, the trigger that PW4 talked about must have already taken place well before the accident. According to DW3, this was not "unusual" as the "onset of an acute myocardial infarction does not necessarily lead to sudden incapacitation nor significantly diminish the ability to carry out complex functions such as driving a car".

[56] Clearly, the testimonies of DW2 and DW3 are to be preferred over that of PW2 and PW4 for the simple yet material reason: their evidence is based on examination and tests carried out; the post mortem on the deceased himself; and on tissue and blood samples taken from the deceased. PW4, on the other hand, while his evidence is not wrong, it is evidence which is not in relation to the actual facts and conditions here. In fact, PW4's testimony was more in the nature of general explanations, theoretical as opposed to the reality as ascertained by DW2 and DW3. Faced with such contrasts, it would be difficult if not unsafe for the court to accept the views of either medical evidence called by the plaintiff. The court actually cannot ignore the forensic evidence given by DW2 and DW3 on the cause of death.

[57] With all this medical evidence, it really does not matter what PW2 has to say. Heart attacks are one of these insidious conditions that creep up on you. As explained by PW4, one can have an attack and not be aware of it. In this case, the autopsy revealed that the deceased had had previous attacks unknown to anyone, apparently, including the deceased himself.

"Sole And Independent Cause Of Death" & Exclusion Clause

[58] The terms of this policy is peculiar in that it requires the accident to be the sole and independent cause of bodily injury which brings about death. It further excludes cover where the death is directly or indirectly caused by "any form of disease".

[59] From the post mortem results, the testimonies of the three doctors in their respective specialisation, it is without doubt that the deceased had a diseased heart; and that diseased heart had everything to do with the heart attack. While the accident undeniably occurred, it was not a cause of the deceased's death, proximate or otherwise. But for the diseased heart, the accident would not have brought about the death. In fact, as found by DW3, it was this "underlying natural disease" which "was the cause of the accident". That being so, the cover is not available in this case.

[60] This is similar to what transpired in the facts of *Jason v. Batten (supra)* although the plaintiff there was a known anxious, highly strung and tensed up man. He also smoked about 40 cigarettes a day and had had dyspepsia. He also had matrimonial problems and had been involved in litigation over the custody of

his children for over a year. He worked extremely hard and kept long hours at work. The plaintiff suffered severe coronary thrombosis, severe bruising, pain and shock as a result of an accident where the wheel of the van that he was driving came off causing the van to crash.

[61] The plaintiff brought two claims; one against the Batten who repaired his van for negligence in repairing his van; the second against the insurance company under an accident policy which contained terms not unlike those in the policy in our instant case. The court in that case was faced with what it referred to as "two difficult issues of fact to resolve", the second issue being common to the plaintiff's two claims; that is "whether the coronary thrombosis was causally connected with the accident, in the sense that it was precipitated by it".

[62] Fisher J scrutinised the medical evidence in detail and found that all the medical witnesses are agreed that the blow to the chest during the accident played no part in precipitating the thrombosis; and that prior to the accident, the plaintiff was already suffering from arterial disease. Apparently, in that condition, the plaintiff "might have had a thrombosis any day or he might never have had one, though the latter was unlikely; any stress or anxiety could have brought one on, and the chances would have increased as time went on. At the time, however, he did not know, nor did he or his doctor suspect, that he had a heart condition".

[63] Fisher J also found that it was "common ground that though a coronary thrombosis can occur without any detectable precipitating event, it can be precipitated by the anxiety and stress associated with an event such as a motor accident, especially in a nervous or anxious person … Anxiety will stimulate the heart, raise the blood pressure and increase the demands on the heart." His Lordship then concluded that "on the whole of the medical evidence that it was established on the balance of probabilities that the stress associated with the accident precipitated the coronary thrombosis … that there were two causes of the thrombosis: the pre-existing arterial disease and the accident".

[64] His Lordship was prepared to consider the "anxiety or the change in the blood or the clot itself" as "a bodily injury sustained in the accident" though he found it "a strained and unnatural use

of words". However, because of the clear terms of the policy which required the bodily injury to be "independently of other causes the exclusive … cause of the disablement"; and that there "were two concurrent causes, the pre-existing arterial disease and the formation of the clot," the claim failed. The policy required both direct and other causes to be examined. Should "other causes" play a part, the claim will not succeed.

[65] Similarly, even if the accident had caused the myocardial infarction, the wording of this policy is clear in that it requires the accident to be the sole cause. This is unlike the position in *Smith v. Cornhill Insurance Company Limited* [1938] 54 TLR 869 cited by the plaintiff. At the end of the day, it comes down to the terms of the policy, which is what did the parties agree on.

[66] The way the Court of Appeal dealt with the similar issue of cause of death in *Amanah Raya Bhd v. Jerneh Insurance Bhd* [2005] 2 CLJ 393 is instructive. There, the Court of Appeal allowed the plaintiff's claim on appeal finding that the deceased had died from his injuries caused by the accident. The Court of Appeal went through the facts carefully. It found that the deceased had fallen while attempting to put out a fire in his neighbour's house. He had scratches on his shoulder, face and body as a result of the fall. He then suffered a heart attack from which he died. In the policy in that case, the claim was excluded where death was "caused by disease/infection". The autopsy report stated that death was caused by myocardial ischemia due to coronary artery disease and that death was "natural".

[67] The Court of Appeal found that "if not for the fall the deceased would not have had the heart attack"; that "it was the fall that resulted in the death of the deceased"; that the heart attack was "a mere link in the chain initiated dominantly and effectively by the fall". After making this finding, the Court of Appeal carefully construed the terms of the policy and concluded that the exclusion clause did not apply because there was no evidence that the disease was an indirect cause. Instead, the accident was the proximate cause of death. The exclusion clause only excluded coverage for accidents arising directly or indirectly from, *inter alia*, disease.

[68] In the present case, the exclusion clause in this policy is wider in that it disallows death directly or indirectly caused by or in connection with *inter alia* any form of disease. In the substantive cover clause, the word "sole" means nothing less than "only". In addition, before there is cover, the sole cause of the bodily injury must be a cause independent of other causes. No other causes can have anything to do with this sole cause.

[69] Hence, reading the primary cover clause together with the exclusion clause, it may be said that the requirements or conditions for a claim qualifying are fairly stringent. But, that is how and what the parties have agreed in this contract of insurance.

[70] On the facts, the medical facts that is, and on a balance of probabilities, the deceased's heart was actually diseased. A diseased heart is squarely one of the situations excluded in the policy; even indirectly. It does not matter whether he knew about it; as these things often are; you do not know until it hits you. Here, it was not known until the post mortem. The diseased heart was pre-existing and played a part in the bodily injury and the death of Mr Yeoh. This pre-existing condition was the substantive, proximate, effective and dominant cause of the heart attack (see *Gray and Another v. Barr (Prudential Assurance Co Ltd, third party)* [1971] 2 All ER 949; *Wayne Tank and Pump Co Ltd v. Employers Liability Assurance Corporation Ltd* [1973] 3 WLR 483). Even if it were not so, it cannot be denied that it would have been caught by the terms of the exclusion clause of this policy.

[71] As already pointed out earlier, in the interpretation of the terms of cover in this policy, the court will have to uphold the sanctity of the policy where its language is clear and unambiguous. See *Chiew Swee Chai v. British American Insurance Co (M) Sdn Bhd* [1986] 1 CLJ 408; [1986] CLJ (Rep) 316. The terms of this policy only allow the claim if the cause of death fall squarely within its terms. Unfortunately, it did not. DW4 was therefore correct and the defendant was acting entirely within the terms and conditions of the policy when rejecting the plaintiff's claim.

[72] Death is one of the two oft-quoted certainties in life. The other being taxes. While that may be so, it is an emotional time, even when one is prepared. The defendant should take care and greater caution in ensuring that the public is better educated in such matters. There must be simpler and clearer description of the

A brochure and the terms of the policy. While companies may compete to get their appropriate share of the insurance market, it should be done responsibly. Terms ought to be made even clearer through simpler language, not that they are not here. Better pre-action or pre-claims protocols ought to be put into place to
B ensure that sensitivities of the persons in grief are better handled or counselled.

[73] For all the foregoing reasons, the cause of Mr Yeoh's death is proven with scientific empirical testing and examinations to be
C not due to the accident; and even if the accident had anything to do with his death, it was not the sole cause. The exclusion clause of this policy would have operated to bar the plaintiff's claim.

[74] The plaintiff's claim is therefore not proved on a balance of
D probabilities and is accordingly dismissed. However, I do not believe this is an appropriate case that costs be ordered. Each party is therefore to bear its own costs.

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